



# Additional Learning Needs and Education Tribunal (Wales) Act 2018

2018 anaw 2

## PART 2

### ADDITIONAL LEARNING NEEDS

#### CHAPTER 2

##### INDIVIDUAL DEVELOPMENT PLANS

###### *Additional learning provision for detained persons*

### 39 Meaning of “detained person” and other key terms

(1) For the purposes of this Act—

“beginning of the detention” (“*dechrau'r cyfnod o gadw person yn gaeth*”) has the meaning given by section 562J of the Education Act 1996 (c. 56);

“detained person” (“*person sy'n cael ei gadw'n gaeth*”) means a child or young person who is—

- (a) subject to a detention order (within the meaning given by section 562(1A)(a), (2) and (3) of the Education Act 1996), and
- (b) detained in relevant youth accommodation in Wales or England,

and in provisions applying on a person's release includes a person who, immediately before release, was a detained person;

“home authority” (“*awdurdod cartref*”) has the meaning given by section 562J of the Education Act 1996, subject to regulations under subsection (2);

“relevant youth accommodation” (“*llety ieuencid perthnasol*”) has the meaning given by section 562(1A)(b) of the Education Act 1996.

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- (2) Regulations may provide for—
- (a) paragraph (a) of the definition of “home authority” in section 562J(1) of the Education Act 1996 (the home authority of a looked after child) to apply with modifications for the purposes of this Part;
  - (b) provision in regulations made by the Welsh Ministers under section 562J(4) of the Education Act 1996 to apply with or without modifications for the purposes of this Part.

#### Commencement Information

**II** S. 39 in force at 2.11.2020 by [S.I. 2020/1182](#), [reg. 2\(d\)](#)

### 40 Duty to prepare individual development plans for detained persons

- (1) Subsection (2) applies where it is brought to the attention of, or otherwise appears to, a home authority in Wales that—
  - (a) a detained person may have additional learning needs, and
  - (b) an individual development plan is not being kept by a local authority under section 42.
- (2) The authority must—
  - (a) decide whether the detained person has additional learning needs, and
  - (b) if it decides that the detained person has additional learning needs, decide in accordance with regulations under section 46 whether it will be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention to meet the detained person's reasonable needs for education or training.
- (3) Before the home authority makes its decision it must invite the person in charge of the relevant youth accommodation to participate in the decision and, if needed, the preparation of an individual development plan.
- (4) If the home authority decides that the detained person does not have additional learning needs or that it will not be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention, it must notify the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation of the decision and the reasons for the decision.
- (5) If the home authority decides that a detained person has additional learning needs and that it will be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention, it must—
  - (a) prepare an individual development plan for the detained person, and
  - (b) give a copy of the plan to the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation.
- (6) If the home authority prepares an individual development plan, it must—
  - (a) decide whether additional learning provision should be provided to the detained person in Welsh, and
  - (b) if it decides that a particular kind of additional learning provision should be provided in Welsh, specify in the plan that it should be provided in Welsh.

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- (7) If it will not be possible to meet the reasonable needs of the detained person for additional learning provision when he or she is released from detention unless the home authority also secures provision of the kind mentioned in subsection (8), the authority must include a description of that other provision in the plan.
- (8) The kinds of provision are—
- (a) a place at a particular school or other institution;
  - (b) board and lodging.
- (9) The duty in subsection (7)—
- (a) does not apply to a place at a particular school or other institution that is not a maintained school in Wales if the person or body responsible for admissions to the school or other institution does not consent;
  - (b) is subject to the duties in sections 55, 56(3) and 59.

#### **Modifications etc. (not altering text)**

- C1** S. 40(4) modified (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), [regs. 1\(2\)](#), [36\(a\)](#)
- C2** S. 40(4) modified (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), [regs. 1\(2\)](#), [38\(a\)](#)
- C3** S. 40(5)(b) modified (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), [regs. 1\(2\)](#), [36\(a\)](#)
- C4** S. 40(5)(b) modified (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), [regs. 1\(2\)](#), [38\(b\)](#)

#### **Commencement Information**

- I2** S. 40 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), [arts. 3, 4](#) (as amended by [S.I. 2021/938](#), [art. 2\(3\)](#))
- I3** S. 40 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), [art. 5](#)
- I4** S. 40 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), [arts. 6, 7](#) (as amended by [S.I. 2021/938](#), [art. 2\(4\)\(5\)](#))
- I5** S. 40 in force at 1.1.2022 for specified purposes by [S.I. 2021/1243](#), [art. 3\(e\)](#) (with [arts. 4-23](#)) (as amended by [S.I. 2021/1428](#), [art. 2](#); (10.6.2022) by [S.I. 2022/663](#), [art. 2](#) and (21.8.2023) by [S.I. 2023/932](#), [art. 2](#))
- I6** S. 40 in force at 1.1.2022 for specified purposes by [S.I. 2021/1245](#), [arts. 3\(e\), 4](#) (with [art. 1\(4\)](#))
- I7** S. 40 in force at 1.1.2022 for specified purposes by [S.I. 2021/1244](#), [art. 3\(e\)](#) (with [arts. 4-21](#)) (as amended by [S.I. 2021/1428](#), [art. 3](#); and (10.6.2022) by [S.I. 2022/663](#), [art. 3](#); and (21.8.2023) by [S.I. 2023/932](#), [art. 3](#))

#### **41 Circumstances in which the duty in section 40(2) does not apply**

- (1) The duty in section 40(2) does not apply if either of the circumstances in subsection (2) apply.
- (2) The circumstances are—
- (a) the detained person is a young person who does not consent to a decision under section 40(2)(a) being made or to a plan being prepared;
  - (b) the home authority has previously decided whether the detained person has additional learning needs and it is satisfied that—

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- (i) the detained person's needs have not changed materially since that decision was made, and
- (ii) there is no new information that materially affects a decision under section 40(2)(a) or (b).

#### **Modifications etc. (not altering text)**

- C5** S. 41(2)(a) modified (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), regs. 1(2), **38(c)**

#### **Commencement Information**

- I8** S. 41 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), **arts. 3, 4** (as amended by [S.I. 2021/938](#), **art. 2(3)**)
- I9** S. 41 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), **art. 5**
- I10** S. 41 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), **arts. 6, 7** (as amended by [S.I. 2021/938](#), **art. 2(4)(5)**)
- I11** S. 41 in force at 1.1.2022 for specified purposes by [S.I. 2021/1244](#), **art. 3(e)** (with **arts. 4-21**) (as amended by [S.I. 2021/1428](#), **art. 3**; and (10.6.2022) by [S.I. 2022/663](#), **art. 3**; and (21.8.2023) by [S.I. 2023/932](#), **art. 3**)
- I12** S. 41 in force at 1.1.2022 for specified purposes by [S.I. 2021/1243](#), **art. 3(e)** (with **arts. 4-23**) (as amended by [S.I. 2021/1428](#), **art. 2**; (10.6.2022) by [S.I. 2022/663](#), **art. 2** and (21.8.2023) by [S.I. 2023/932](#), **art. 2**)
- I13** S. 41 in force at 1.1.2022 for specified purposes by [S.I. 2021/1245](#), **arts. 3(e), 4** (with **art. 1(4)**)

## **42 Duty to keep individual development plans for detained persons**

- (1) This section applies where an individual development plan was being maintained for a detained person immediately before the beginning of his or her detention by—
  - (a) the governing body of a maintained school in Wales or an institution in the further education sector in Wales under section 12, or
  - (b) a local authority in Wales under section 14 or 19.
- (2) This section also applies where an individual development plan is prepared under section 40(5).
- (3) If the home authority for the detained person is a home authority in Wales, the home authority must keep the individual development plan for the detained person during his or her detention in relevant youth accommodation.
- (4) But the duty in subsection (3) does not apply where the detained person is a young person who does not consent to the individual development plan being kept.
- (5) Nor does the duty in subsection (3) apply in relation to an individual development plan that was being maintained by the governing body of a maintained school or an institution in the further education sector, or by a local authority other than the home authority, unless the fact that the plan was being maintained is brought to the attention of the home authority.
- (6) The home authority must inform the detained person and the parent of a detained person who is a child that it is keeping an individual development plan while the person is detained in relevant youth accommodation.

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- (7) The home authority must give a copy of the individual development plan to the person in charge of the relevant youth accommodation.
- (8) Where a home authority keeps an individual development plan, it must—
- (a) arrange for appropriate additional learning provision to be provided to the detained person, and
  - (b) if the plan specifies that the additional learning provision should be provided in Welsh, take all reasonable steps to secure that the appropriate additional learning provision is provided to the detained person in Welsh.
- (9) In this section “appropriate additional learning provision” is—
- (a) the additional learning provision specified in the individual development plan,
  - (b) if it appears to the home authority that it is not practicable for the additional learning provision specified in the plan to be provided, educational provision corresponding as closely as possible to that additional learning provision, or
  - (c) if it appears to the home authority that the additional learning provision specified in the plan is no longer appropriate for the detained person, additional learning provision which the home authority considers appropriate.

#### **Modifications etc. (not altering text)**

- C6** S. 42(4) modified (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), regs. 1(2), **38(c)**
- C7** S. 42(6) modified (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), regs. 1(2), **36(a)**
- C8** S. 42(6) modified (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), regs. 1(2), **38(d)**

#### **Commencement Information**

- I14** S. 42 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), **arts. 3, 4** (as amended by [S.I. 2021/938](#), art. 2(3))
- I15** S. 42 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), **art. 5**
- I16** S. 42 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), **arts. 6, 7** (as amended by [S.I. 2021/938](#), art. 2(4)(5))
- I17** S. 42 in force at 1.1.2022 for specified purposes by [S.I. 2021/1245](#), **arts. 3(e), 4** (with art. 1(4))
- I18** S. 42 in force at 1.1.2022 for specified purposes by [S.I. 2021/1244](#), **art. 3(e)** (with arts. 4-21) (as amended by [S.I. 2021/1428](#), **art. 3**; and (10.6.2022) by [S.I. 2022/663](#), **art. 3**; and (21.8.2023) by [S.I. 2023/932](#), **art. 3**)
- I19** S. 42 in force at 1.1.2022 for specified purposes by [S.I. 2021/1243](#), **art. 3(e)** (with arts. 4-23) (as amended by [S.I. 2021/1428](#), **art. 2**; (10.6.2022) by [S.I. 2022/663](#), **art. 2** and (21.8.2023) by [S.I. 2023/932](#), **art. 2**)

## **43 Release of a detained person**

- (1) Subsection (2) applies where—
- (a) a detained person is released,
  - (b) on the release date, a local authority in Wales is responsible for the person, and
  - (c) an individual development plan was kept for the person under section 42 during the detention.

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- (2) The local authority must maintain the plan; and the plan is to be treated as maintained under section 14 for the purposes of this Part, with any provision described in the plan in accordance with section 19(4) or 40(7) being treated as described in accordance with section 14(6).
- (3) But subsection (4) applies instead of subsection (2) if—
  - (a) the person who has been released is a child, and
  - (b) immediately on release, the child is looked after by a local authority.
- (4) The local authority that looks after the child must maintain the plan; and the plan is to be treated as maintained under section 19 for the purposes of this Part, with any provision described in the plan in accordance with section 14(6) or 40(7) being treated as described in accordance with section 19(4).

#### Commencement Information

- I20** S. 43 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), **arts. 3, 4** (as amended by [S.I. 2021/938](#), **art. 2(3)**)
- I21** S. 43 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), **art. 5**
- I22** S. 43 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), **arts. 6, 7** (as amended by [S.I. 2021/938](#), **art. 2(4)(5)**)
- I23** S. 43 in force at 1.1.2022 for specified purposes by [S.I. 2021/1243](#), **art. 3(e)** (with **arts. 4-23**) (as amended by [S.I. 2021/1428](#), **art. 2**; (10.6.2022) by [S.I. 2022/663](#), **art. 2** and (21.8.2023) by [S.I. 2023/932](#), **art. 2**)
- I24** S. 43 in force at 1.1.2022 for specified purposes by [S.I. 2021/1244](#), **art. 3(e)** (with **arts. 4-21**) (as amended by [S.I. 2021/1428](#), **art. 3**; and (10.6.2022) by [S.I. 2022/663](#), **art. 3** and (21.8.2023) by [S.I. 2023/932](#), **art. 3**)
- I25** S. 43 in force at 1.1.2022 for specified purposes by [S.I. 2021/1245](#), **arts. 3(e), 4** (with **art. 1(4)**)

#### 44 Certain provisions of Part 2 not to apply to children and young persons in detention

- (1) The duties imposed by the provisions in subsection (2) on the following bodies cease to apply in relation to a detained person from the beginning of that person's detention—
  - (a) the governing body of a maintained school;
  - (b) the governing body of an institution in the further education sector;
  - (c) a local authority.
  - [<sup>F1</sup>(d) an NHS body.]
- (2) The provisions are—
  - (a) section 11 (governing body's duty to decide);
  - (b) section 12 (governing body's duty to prepare and maintain a plan);
  - (c) section 13 (local authority's duty to decide);
  - (d) section 14 (local authority's duty to prepare and maintain a plan);
  - [<sup>F2</sup>(da) section 20(5)(a) and (c) (NHS body's duty to secure a treatment or service and to take all reasonable steps to secure it in Welsh);]
  - (e) section 26 (local authority's duty to reconsider governing body's decision);
  - (f) section 30(2) (governing body's duty to refer where child or young person registered or enrolled at more than one institution);

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- (g) section 47(2) (governing body's duty to take all reasonable steps to secure additional learning provision).
- (3) The duties imposed by the provisions in subsection (4) on the governing body of a maintained school or on the governing body of an institution in the further education sector do not apply in relation to a child or young person at any time while that child or young person is—
- (a) subject to a detention order (within the meaning given by section 562(1A)(a), (2) and (3) of the Education Act 1996), and
  - (b) detained in accommodation other than relevant youth accommodation in Wales or England.
- (4) The provisions are—
- (a) section 11 (duty to decide);
  - (b) section 12 (duty to prepare and maintain a plan);
  - (c) section 17 (duty to refer a matter to a local authority that looks after a child);
  - (d) section 30(2) (duty to refer where child or young person registered or enrolled at more than one institution);
  - (e) section 47(2) (duty to take all reasonable steps to secure additional learning provision).
- (5) Subsection (6) applies until section 49 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) (application of provisions to persons detained in relevant youth accommodation) comes fully into force in relation to Wales.
- (6) Section 562 of the Education Act 1996 (c. 56) is to have effect for the purpose of the powers and duties conferred or imposed by or under this Part on local authorities as though section 49 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) were fully in force in relation to Wales.
- (7) For the purposes of this Part, the reference in subsection (1) of section 562 of the Education Act 1996 (c. 56) to relevant youth accommodation is to have effect as though it were a reference to relevant youth accommodation in Wales or England.

#### Textual Amendments

- F1** S. 44(1)(d) inserted (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), regs. 1(2), **19(1)(a)**
- F2** S. 44(2)(da) inserted (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), regs. 1(2), **19(1)(b)**

#### Commencement Information

- I26** S. 44 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), arts. 3, 4 (as amended by [S.I. 2021/938](#), art. 2(3))
- I27** S. 44 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), art. 5
- I28** S. 44 in force at 1.9.2021 for specified purposes by [S.I. 2021/373](#), arts. 6, 7 (as amended by [S.I. 2021/938](#), art. 2(4)(5))
- I29** S. 44 in force at 1.1.2022 for specified purposes by [S.I. 2021/1245](#), arts. 3(e), 4 (with art. 1(4))
- I30** S. 44 in force at 1.1.2022 for specified purposes by [S.I. 2021/1243](#), art. 3(e) (with arts. 4-23) (as amended by [S.I. 2021/1428](#), art. 2; (10.6.2022) by [S.I. 2022/663](#), art. 2 and (21.8.2023) by [S.I. 2023/932](#), art. 2)

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- I31** S. 44 in force at 1.1.2022 for specified purposes by S.I. 2021/1244, **art. 3(e)** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**; and (10.6.2022) by S.I. 2022/663, **art. 3**; and (21.8.2023) by S.I. 2023/932, **art. 3**)

#### **45 Detention under Part 3 of the Mental Health Act 1983**

- (1) Subsection (2) applies where, because of section 44 or section 562 of the Education Act 1996 (c.56), powers or duties conferred or imposed by or under this Part on local authorities or on the governing bodies of maintained schools or institutions in the further education sector do not apply in relation to a child or young person who is—
- (a) subject to a detention order (within the meaning given by section 562(1A)(a), (2) and (3) of the Education Act 1996), and
  - (b) detained in a hospital under Part 3 of the Mental Health Act 1983 (c. 20).
- (2) Regulations may provide for those powers or duties to be applied, with or without modification, in relation to the child or young person.

#### **Commencement Information**

- I32** S. 45 in force at 2.11.2020 by S.I. 2020/1182, **reg. 2(e)**



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